Remarks

Reconsideration of this Application is respectfully requested.

Upon entry of the foregoing amendment, claims 1, 4-16, 18 and 19 are pending in the application, with claims 1, 6, 7, 12 and 16 being the independent claims. Claims 3 and 17 are sought to be cancelled without prejudice to or disclaimer of the subject matter therein. Claims 1, 7, 12, 13, 16 and 19 are sought to be amended. Applicants reserve the right to prosecute similar or broader claims, with respect to the cancelled and amended claims, in the future. These changes are believed to introduce no new matter, and their entry is respectfully requested.

Based on the above amendment and the following remarks, Applicants respectfully request that the Examiner reconsider all outstanding rejections and that they be withdrawn.

Rejections under 35 U.S.C. § 101

The Examiner has rejected claims 12-19 under 35 U.S.C. § 101 as being allegedly directed to non-statutory subject matter.

Without acquiescing to the propriety of the rejection, claim 17 was cancelled for other reasons. Therefore, Applicants believe the rejection of this claim has been rendered moot.

Without acquiescing to the propriety of the rejection, Applicants have amended independent claims 12 and 16 to make clear that the computer program instructions are recorded (e.g., stored or embodied) on a computer readable medium capable of being executed by a processor. Applicants respectfully submit that these amendments fully

address the Examiner's rejection. Accordingly, Applicants respectfully request that the rejections of claims 12-16, 18, and 19 under 35 U.S.C. § 101 be reconsidered and withdrawn.

Rejection under 35 U.S.C. § 112

The Examiner has rejected claims 12-19 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. In particular, the Examiner asserts that the features recited in independent claims 12 and 16 of "computer -readable medium" and "computer useable medium" are not supported by the original specification. Dependent claims 13-15 and 17-19 have been rejected by virtue of their dependency on independent claims 12 and 16. For the reasons set forth below, Applicants respectfully traverse.

Without acquiescing to the propriety of the rejection, claim 17 was cancelled for other reasons. Therefore, Applicants believe the rejection of this claim has been rendered moot.

As noted above in overcoming the 35 U.S.C. §101 rejection, Applicants direct the Examiner to exemplary FIG. 2, element 12 of the present application that clearly illustrates memory "for storing a control program and various data." *See* Specification, page 5, lines 24-25. Applicants respectfully submit that a person skilled in the art would clearly understand the term "memory" to encompass at least the terms "computer-readable medium" and "computer useable medium," as recited by claims 12 and 16.

In view of the foregoing, Applicants respectfully submit that the rejection of claims 12-16, 18 and 19 under 35 U.S.C. § 112, first paragraph, be reconsidered and withdrawn.

Rejections under 35 U.S.C. § 102

Alfano

The Examiner has rejected claims 1, 3-5, 7-10 and 12-19 under 35 U.S.C. § 102(e) as being allegedly anticipated by U.S. Patent No. 6,094,423 to Alfano et al. ("Alfano"). Applicants respectfully traverse this rejection.

Without acquiescing to the propriety of the rejection, claim 17 has been cancelled for other reasons, which Applicants believe should render moot its rejection.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987).

Alfano does not either expressly or inherently describe each and every element of independent claims 1, 7, 12, and 16. For example, as will be explained below, Alfano does not teach or suggest at least the following features recited, using respective language, in claims 1, 7, 12, and 16:

> transmit a query to a destination communication device corresponding to packet units that are recognizable by the destination communication device;
> receive information from the destination communication device corresponding to packet units that are recognizable by the destination communication device in response to the query... .

- 12 -

TAKATORI *et al.*
Appl. No. 10/054,038

Alfano is directed to a system and method for linking a transaction protocol and a connection-oriented protocol in a wireless communication protocol device. A transaction protocol, in comparison to a connection-oriented protocol, "has a low implementation and operating cost." *See* Alfano, col. 2, lines 34-36. However, the use of a transaction protocol is not always possible. Transaction protocols are "designed around a maximum amount of data being allowed to be transmitted in each message exchange." *See* Alfano, col. 2, lines 31-34. As such, the use of a connection-oriented protocol is required in instances where the maximum amount of data to be transmitted exceeds this limit of a transaction protocol. Alfano purports "an ideal solution" by using the transaction protocol in cases where the transaction protocol is sufficient to carry messages "and a connection-oriented protocol in all other cases." *See* Alfano, col. 2, lines 50-54.

Transaction protocols, as specifically disclosed in Alfano, simply include "a short request for information by an initiator and a response to the request from the recipient." *See* Alfano, col. 2, lines 15-17. Consequently, only a single message is transmitted from both the initiator and the recipient in a single transaction. If the response to a request sent by an initiator is greater than a single maximum transmission unit (MTU), the responder (i.e., the recipient) will segment the message and eventually begin to execute a connection-oriented protocol. *See* Alfano, col. 5, lines 64-67, col. 6, lines 1-42.

The Examiner appears to state this scheme of transitioning from a transaction protocol to a connection-oriented protocol disclosed in Alfano, with the above-noted distinguishing features of claims 1, 7, 12, and 16. *See* present Office Action, page 5. Applicants respectfully disagree with the Examiner's position.

Neither the initiator nor the recipient in the scheme of Alfano discussed above "transmit a query to a destination communication device corresponding to packet units that are recognizable by the destination communication device," as claims 1, 7, 12, and 16 recite. At most, in Alfano a recipient receives a request for information that is sent by an initiator, and determines if the appropriate response to the request is greater than an MTU. The recipient would then transmit the requested information to the initiator using either a transaction protocol or a connection-oriented protocol based upon this determination. As such, **neither** the request for information sent by the initiator, **nor** the response provided in turn by the recipient, involves a query for packet units that are recognizable by a destination device. In fact, the Examiner has provided no specific indication as to where in Alfano such a teaching may be found. The Examiner merely refers to column 5, lines 64-67 and column 6 of Alfano, which describes the completely unrelated scheme of transitioning from a transaction protocol to a connection-oriented protocol as described above. *See* present Office Action, page 5.

Moreover, since neither the initiator nor the recipient in the scheme of Alfano discussed above "transmit a query to a destination communication device corresponding to packet units that are recognizable by the destination communication device," then Alfano cannot logically teach receiving "information from the destination communication device corresponding to packet units that are recognizable by the destination communication device **in response to the query**," as further recited by claims 1, 7, 12, and 16 (emphasis added).

Since Alfano does not teach or suggest each and every feature of claims 1, 7, 12, and 16, it cannot anticipate the claims. Claims 3-5 are similarly not anticipated by

- 14 -

TAKATORI *et al.*
Appl. No. 10/054,038

Alfano for the same reasons as claim 1, from which they depend, and further in view of their own respective features. Claims 8-10 are similarly not anticipated by Alfano for the same reasons as claim 7, from which they depend, and further in view of their own respective features. Claims 13-15 are similarly not anticipated by Alfano for the same reasons as claim 12, from which they depend, and further in view of their own respective features. Claims 16 and 18-19 are similarly not anticipated by Alfano for the same reasons as claim 16, from which they depend, and further in view of their own respective features.

Accordingly, Applicants respectfully request that the rejection of claims 1, 3-16, and 18-19 under 35 U.S.C. § 102(e) be reconsidered and withdrawn.

Yanagidate

The Examiner has rejected claims 6 and 11 under 35 U.S.C. § 102(e) as being allegedly anticipated by U.S. Patent Publication No. 2002/0099632 to Yanagidate et al. ("Yanagidate"). For the reasons set forth below, Applicants respectfully traverse.

Yanagidate does not either expressly or inherently describe each and every element of independent claim 6. For example, Yanagidate does not teach or suggest at least "a billing file generating device configured to generate a billing file comprising information for billing which includes the type of a transmitted packet unit, the number of transmitted packets, and a packet communication rate, with respect to an identification (ID) to be billed," as recited by independent claim 6.

Yanagidate is directed to a method for employing a cable television (CATV) network as an IP network to provide an internet connection service. *See* Yanagidate, at

Abstract. Yanagidate, in FIG. 1, provides a structural example of a CATV network employed as an IP network that includes: subscriber terminals 20, transmission path 1, bill charging device 30, customer information management service 32, WWW server 31, and the internet 4. *See* Yanagidate, paragraphs [0037]-[0039]. With respect to a flow chart in FIG. 5 of Yanagidate, the Examiner states at page 8 of the Office Action the "HTML document" transmitted from the WWW server 31 to the subscriber terminal 20 at step S24 with the billing file recited in claim 6. The Examiner then goes on to state at page 8 of the Office Action the information stored in the billing file recited in claim 6, with further features disclosed in Yanagidate. However, the features of Yanagidate the Examiner states are not all stored within the same file (i.e., the "HTML document" of Yanagidate), let alone the same device, as recited by claim 6.

For example, the Examiner appears to state "the number of transmitted packets" stored within the billing file of claim 6, is taught by the packet flowing ratio described at paragraph [0079] of Yanagidate. *See* present Office Action, page 8. However, Yanagidate does not teach or suggest that the packet flowing ratio, discussed at paragraph [0079] of Yanagidate, is stored within the "HTML document" transmitted from the WWW server 31 to the subscriber terminal 20 at step S24 of FIG. 5.

Since Yanagidate does not teach or suggest each and every feature of claim 6, it cannot anticipate that claim. Claim 11 is similarly not anticipated by Yanagidate for the same reason as claim 6, from which it depends, and further in view of its own respective feature. Accordingly, Applicants respectfully request that the rejection of claims 6 and 11 under 35 U.S.C. § 102(e) be reconsidered and withdrawn.

Conclusion

All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. Applicants believe that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment and Reply is respectfully requested.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.

Jason D. Eisenberg
Attorney for Applicants
Registration No. 43,447

Date: _____

1100 New York Avenue, N.W.
Washington, D.C. 20005-3934
(202) 371-2600
820698_1.DOC